

# Dog Helps a Witness Testify, and Legal Questions Follow



Kelly Shimoda for The New York Times

Rosie, a dog that accompanies children as they testify in court, with Lori Stella, a social worker, outside the Dutchess County Courthouse in Poughkeepsie, N.Y.

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POUGHKEEPSIE, N.Y. — Rosie, the first judicially approved courtroom dog in New York, was in the witness box here nuzzling a 15-year-old girl who was testifying that her father had raped and impregnated her. Rosie sat by the teenager's feet. At particularly bad moments, she leaned in.

When the trial ended in June with the father's conviction, the teenager "was most grateful to Rosie above all," said David A. Crenshaw, a psychologist who works with the teenager. "She just kept hugging Rosie."

Now an appeal planned by the defense lawyers is placing Rosie at the heart of a legal debate that will test whether there will be more Rosies in courtrooms in New York and, possibly, other states.

[Rosie](#) is a golden retriever therapy dog who specializes in comforting people when they are under stress. Both prosecutors and defense lawyers have described her as adorable, though she has been known to slobber. Prosecutors here noted that she is also in the vanguard of a growing trial trend: in Arizona, Hawaii, Indiana, Idaho and some other states in the last few years, courts have allowed such trained dogs to offer children and other vulnerable witnesses nuzzling solace in front of juries.

The new role for dogs as testimony enablers can raise thorny legal questions, however, with defense lawyers arguing that the dogs may unfairly sway jurors with their cuteness and the natural empathy they attract — whether a witness is telling the truth or not — and some prosecutors insisting that the courtroom dogs can be a crucial comfort to those enduring the ordeal of testifying, especially children.

The new witness-stand role for dogs in a handful of states began in 2003, when the prosecution won permission for a dog named Jeeter with a beige button nose to help in a sexual assault case in Seattle. “Sometimes the dog means the difference between a conviction and an acquittal,” said Ellen O’Neill-Stephens, a Seattle prosecutor who has become a campaigner for the [dog-in-court cause](#).

Seeing-eye and other [service dogs](#) have long been permitted in courts. But in a ruling in June that allowed Rosie to accompany the teenage rape victim to the trial here, a Dutchess County Court judge, Stephen L. Greller, said the teenager was traumatized and the defendant, Victor Tohom, appeared threatening. Although he said there was no precedent in the state, Judge Greller ruled that Rosie was similar to the teddy bear that a New York state [appeals court said](#) in 1994 could accompany a child witness.

At least once when the teenager hesitated in Judge Greller’s courtroom, Rosie rose and seemed to push the girl gently with her nose. Mr. Tohom was convicted and sentenced to 25 years to life.

His public defenders, David S. Martin and Steven W. Levine, have raised a series of objections that they say seem likely to land the case in New York’s highest court. They argue that as a therapy dog, Rosie responds to people under stress by comforting them, whether the stress comes from confronting a guilty defendant or lying under oath.

But they say jurors are likely to conclude that the dog is helping victims expose the truth. “Every time she stroked the dog,” Mr. Martin said in an interview, “it sent an unconscious message to the jury that she was under stress because she was telling the truth.”

“There was no way for me to cross-examine the dog,” Mr. Martin said.

In written arguments, the defense lawyers claimed it was “prosecutorial misconduct” for the Dutchess County assistant district attorney handling the rape case, Kristine Hawlk, to arrange for Rosie to be taken into the courtroom. Cute as the dog was, the defense said, Rosie’s presence “infected the trial with such unfairness” that it constituted a violation of their client’s constitutional rights.

Ms. Hawlk declined to discuss Rosie. In written arguments, she said that all Rosie did was help a victim suffering from serious emotional distress, and she called the defense claims “frivolous accusations.”

The defense lawyers acknowledged the risk of appearing anti-dog. Rosie, they wrote, “is a lovely creature and by all standards a ‘good dog,’ ” and, they added, the defendant “wishes her only the best.”

As the lawyers prepare their appeal, Rosie has been busy. She spent much of her time in recent weeks with two girls, ages 5 and 11, who were getting ready to testify against the man accused of murder in the stabbing of their mother.

The Dutchess County prosecutor in that case, Matthew A. Weishaupt, argued that Rosie and dogs like her did not affect the substance of the testimony about horrifying crimes. “These dogs ease the stress and ease the trauma so a child can take the stand,” Mr. Weishaupt said in an interview.

In the end, Rosie was not needed in the second case: the defendant, Gabriel Lopez-Perez, who had a history of domestic violence, interrupted his trial last week to plead guilty to killing the girls’ mother, his girlfriend, in the Wappingers Falls rooming house where they lived. But Rosie’s promised appearance next to the children might well have played a role. “It became obvious,” said Andres Aranda, Mr. Lopez-Perez’s lawyer, “that the children were going to be testifying, and he decided to avoid that.”

The defense’s appeal of Rosie’s first courtroom outing, in the rape case, is likely to establish legal principles on the issues of dogs in the witness box. “It is an important case, and appeals courts will consider it an important case,” James A. Cohen, a professor of criminal law at Fordham University School of Law, said.

When New York appeals courts study the question, they are likely to look at the experience of courtroom dogs around the country, including in Washington. In Seattle, a developmentally disabled 57-year-old man, Douglas K. Lare, recently recalled how a Labrador retriever named Ellie, who has made more than 50 court appearances, helped him testify against a man charged with a scheme to steal from him.

Ellie gave him courage when he was afraid, Mr. Lare said in an interview: “It was like I had no other friends in the courthouse except Ellie,” he said.

For 11-year-old Rosie, said her owners, Dale and Lu Picard, the courtroom work is a career change after years working with emotionally troubled children at a residential center in Brewster. The [Picards’ organization](#), Educated Canines Assisting With Disabilities, or ECAD, places service dogs after training them to perform tasks like turning lights on and off and opening doors.

Rosie, named for the civil rights pioneer Rosa Parks, was originally taught to follow 80 commands, including taking off a person’s socks without biting any toes. But she has a special

talent with traumatized children, said Dr. Crenshaw, the psychologist who has worked with all three of Rosie's witnesses and many other troubled children.

"When they start talking about difficult things," Dr. Crenshaw said, "Rosie picks up on that and goes over and nudges them. I've seen it with my own eyes."